THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.18498 OF 2006

DATED 18th SEPTEMBER, 2006

BETWEEN

Alloy Cables Limited and others

… Petitioners

and

The A.P.Southern Power Distribution Company Limited and others.

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.18498 OF 2006

ORDER:

The first respondent herein invited sealed bids for supply of 20,000 kilometers of conductor (34 sq.mm AAA) vide specification No.SPMPT-81/06-07, the tenders have to be submitted on or before 25.05.2006. All the petitioners herein are small scale units exclusively engaged in the manufacturing of ACSR, AA and AAA conductors, AB cables and DPL wires particularly used by the respondents in the transmission of electrical energy. All of them submitted tenders. Each of them will have to supply 4,000 kilometers of the conductor at the rates ranging from Rs.18,995/- per kilometer to Rs.19,442/- per kilometer. Petitioners 1 to 4 are allegedly lowest No.1 (L.1) and petitioners 5 and 6 are lowest No.2 (L.2) in the evaluation process. At that stage, it appears the first respondent called all the tenderers for negotiations and gave a counter offer on 04.08.2006 at Rs.18,582.06 ps per kilometer inclusive of freight, insurance and all taxes/duties. The petitioners allege that such a counter offer is not *bona fide* and was made only to single out M/s.Sterlite Industries Limited, which has manufacturing facilities in the State of Karnataka. They further allege that though the petitioners quoted offer at L.1 and L.2, the same were ignored and an unauthorized measures of negotiations were resorted to. The petitioners also allege that the Government of Andhra Pradesh issued G.O.Ms.No.437, dated 05.09.1983 directing the Government Departments, Public Sector Undertakings, Autonomous Bodies to buy as many as 185 items exclusively from small scale industries. The same was subsequently amended by G.O.Ms.No.106, dated 30.03.2005. This was ignored by the respondents. Therefore, the petitioners filed the instant writ petition seeking a direction to the respondents to follow the orders/guidelines issued by the Government of Andhra Pradesh in G.O.Ms.No.437, dated 05.09.1983, as amended by G.O.Ms.No.106, dated 30.03.2005.

Initially the matter was heard at preliminary stage on 07.09.2006 and adjourned to 11.09.2006 directing the respondents 1 and 3 to file counter affidavits. The matter thereafter was adjourned twice but respondents 1 and 3 have not filed any counter affidavit. Respondents 3

and 5 filed a counter affidavit sworn to by the Joint Director in the Office of the fifth respondent. It is stated in the counter affidavit as under.

> … that as per the G.O.Ms.No.437, Industries & Commerce (SSI) Department, dated 5-9-1983 and G.O.Ms.No.106, Industries & Commerce (SSI) Department, dated 30-3-2005 the Government directed that in respect of all items reserved for exclusive purchase from Small Scale Industries Sector, the purchases shall be made only from the registered small scale industries in the State. Whenever tenders are called for purchase of any these items they should specially stipulate that these tenders are being invited only from the registered Small Scale Industries Units in the State. The Director of Industries shall monitor the implementation of these orders and also extent necessary help to the indenting agencies in effecting purchases and also take for standardization of procedures for the purchases ensuing the quality of the items purchased etc. A copy of the G.O.Ms.No.437, Industries & Commerce (SSI) Department, dated 5-9-1983 and G.O.Ms.No.106, Industries & Commerce (SSI) Department, dated 30-3-2005 enclosed as material papers for kind perusal of the Hon'ble Court.

Learned counsel for the petitioners submits that when there was no change in the policy of the Government to encourage small scale industries by compelling the Government Departments, Public Sector Undertakings etc., to buy as many as 185 items reserved for small scale industries and the same is binding on the first respondent. It is nextly contended that M/s.Sterlite Industries Limited is not a small scale industry nor it has any manufacturing facilities in the State of Andhra Pradesh. Therefore, the contract cannot be awarded to the said company when the items to be purchased by the first respondent are exclusively reserved for small scale industries. The legal position is neither disputed nor denied by the learned counsel appearing for the contesting respondents.

The copies of the orders of the Government being G.O.Ms.No.437, dated 05.09.1983 and G.O.Ms.No.106, dated 30.03.2005 are annexed to the writ petition. In the first Government Order, the Government have noticed that the Government of India reserved as many as 185 items for exclusive purchase from small scale industries. After reviewing the position, Government of Andhra Pradesh decided to reserve as many as 384 items for exclusive purchase from the small scale units. Item 9 in the Annexure to the G.O.Ms.No.437, dated 05.09.1983, is "AAC&AVSR conductors upto 19 strand. This is subject to observance of necessity discipline by trade for two years in the first instance after which the position would be reviewed further". By G.O.Ms.No.106, dated 30.03.2005, item 9 in Annexure I appended to G.O.Ms.No.437 was amended by substituting the same with "ACSR/AA/AAA Conductors/AB Cables (upto 19 strands)". When the tenders were invited for 34 Sq.mm

AAA conductor, which is one of the reserved items for exclusive purchase from the small scale units, the same is binding on the first respondent. Therefore, the claim of the petitioners that their tender should be considered in accordance with the Government policy is justified. In fact in this writ petition, a limited relief to that effect is sought.

The writ petition is disposed of directing the first respondent or any other tendering authority to consider the tenders submitted by the petitioners pursuant to tender specification No.SPMPT-81/06-07 keeping in view G.O.Ms.No.437, dated 05.09.1983 as amended by G.O.Ms.No.106, dated 30.03.2005, by giving due consideration to the fact that all the petitioners have small scale units registered in the State of Andhra Pradesh. No costs.

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(V.V.S.RAO,J)

18.09.2006.
pln

Note: Issue CC by 19.09.2006.
(By order)
pln